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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,243	10/05/2005	Kenichiro Shinoi	L9289.04196	8667
52989	7590	02/06/2008		
STEVENS, DAVIS, MILLER & MOSHER, LLP 1615 L. STREET N.W. SUITE 850 WASHINGTON, DC 20036			EXAMINER NGUYEN, TUAN HOANG	
			ART UNIT 2618	PAPER NUMBER
			MAIL DATE 02/06/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/521,243

Applicant(s)

SHINOI, KENICHIRO

Examiner

Tuan H. Nguyen

Art Unit

2618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 08/30/2005 has been considered by Examiner and made of record in the application file.
3. Claims 1-18 canceled.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (US PAT. 6,067,458) in view of Hamabe (U.S PAT. 7,050,761).

Consider claims 19 and 21, Chen teaches a base station apparatus that is controlled by a base station control apparatus and that performs data transmission to and reception from a mobile station apparatus by way of radio communication, said base station apparatus comprising: a quality deficiency signal generation section that generates a quality deficiency signal when reception quality at the mobile station apparatus is lower than a predetermined threshold value (fig. 3 col. 10 lines 12-37).

Chen does not explicitly show that a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus.

In the same field of endeavor, Hamabe teaches a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus (col. 15 lines 24-51).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus, as taught by Hamabe, in order to provide a mobile communication system that is capable of easily carrying out selection of an optimal modulation/coding mode and a modulation/coding mode switching method used therefor as well as a recording medium having program of the same method recorded therein.

Consider claims 20 and 22, Chen teaches a base station apparatus that is controlled by a base station control apparatus and that performs data transmission to

and reception from a mobile station apparatus by way of radio communication, said base station apparatus comprising: a quality deficiency signal generation section that generates a quality deficiency signal when reception quality at the mobile station apparatus is lower than a predetermined threshold value (fig. 3 col. 10 lines 12-37).

Chen does not explicitly show that a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus when the number of times said quality deficiency signal is generated per unit time is greater than or equal to a predetermined number of times.

In the same field of endeavor, Hamabe teaches a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus when the number of times said quality deficiency signal is generated per unit time is greater than or equal to a predetermined number of times (col. 15 lines 24-51).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus when the number of times said quality deficiency signal is generated per unit time is greater than or equal to a predetermined number of times, as taught by Hamabe, in order to provide a mobile communication system that is capable of easily carrying out selection of an optimal modulation/coding mode and a modulation/coding mode switching method used therefor as well as a recording medium having program of the same method recorded therein.

Consider claim 23, Hamabe further teaches when the number of times said quality deficiency signal is reported per unit time is greater than a predetermined number of times, data transmission for the mobile station apparatus is switched from a High Speed Downlink Packet Access (HSDPA) mode to a Dedicated Downlink Physical Channel (DPCH) mode (col. 55 line 24-51 and col. 17 lines 19-26).

Conclusion

6. Any response to this action should be mailed to:

Mail Stop_____ (Explanation, e.g., Amendment or After-final, etc.)

Commissioner for Patents

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Facsimile responses should be faxed to:

(571) 273-8300

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan H. Nguyen whose telephone number is (571) 272-8329. The examiner can normally be reached on 8:00Am - 5:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Maung Nay A. can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information Consider the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tuan Nguyen
Examiner
Art Unit 2618 *T.N*


NAY MAUNG
SUPERVISORY PATENT EXAMINER *R*